IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. Civil Second Appeal No.91 of 2000.

Kishan & Others Vs. Ramchander & Others.

Date of Order ::: 04/12/2006

Hon'ble Mr. Narendra Kumar Jain, J.

Mr. Arvind Bhardwaj, Counsel for defendant-appellants.

By the Court :

Heard learned counsel for the defendant-appellants.

The plaintiff-respondents filed a suit for permanent injunction in the Lower Court in respect of the disputed way, which was dismissed. However, on an appeal filed by the plaintiffs the First Appellate Court while reversing the finding of lower Court, decreed the suit of the plaintiff. The First Appellate Court has observed that the defendants did not appear in the Lower Court inspite of service of summons. An ex-parte order was also passed against the defendants

on 23.10.1988. The First Appellate Court has also observed that the Lower Court committed an illegality in dismissing the suit of the plaintiffs only on the ground that the plaintiff's evidence is not corroborated by the independent witness, whereas in the opinion of the First Appellate Court, the evidence produced in the case by the plaintiffs was sufficient and there was no necessity of any corroboration of the same. After considering the statement of the plaintiffs as well as the documentary evidence including Exhibit-2 trace prepared by Patwari, wherein disputed way was shown, the suit of the plaintiff was decreed.

I have heard learned counsel for the defendant-appellants and after considering his submissions in the light of the finding of the First Appellate Court, I find that the controversial issues involved in the present case relate to the question of facts and there is a finding of fact by the First Appellate Court, which cannot be interfered with by this Court in second appeal under Section 100 of the C.P.C.

No substantial question of law is involved in this second appeal and the same is accordingly

dismissed at the admission stage itself with no order as to costs.

(Narendra Kumar Jain) J.

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